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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 BRUCE COMMITTE,

10 Plaintiff,

11 v.

12 SONJA PIPPIN, *et al.*,

13 Defendants.

Case No. 3:17-cv-00446-MMD-WGC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
WILLIAM G. COBB

14 Before the Court is the Report and Recommendation of United States Magistrate
15 Judge William G. Cobb (ECF No. 3) ("R&R" or "Recommendation"). The Magistrate
16 Judge recommends granting Plaintiff's Application to Proceed *In Forma Pauperis* (ECF
17 No. 1) and dismissing the Complaint (ECF No. 1-1) with prejudice. Plaintiff timely filed an
18 objection thereto on August 11, 2017 ("Objection") (ECF No. 4).

19 This Court "may accept, reject, or modify, in whole or in part, the findings or
20 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
21 timely objects to a magistrate judge's report and recommendation, then the court is
22 required to "make a *de novo* determination of those portions of the [report and
23 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). In light of Plaintiff's
24 objection, the Court engages in a *de novo* review to determine whether to adopt
25 Magistrate Judge Cook's Recommendation.

26 The Magistrate Judge found that Plaintiff fails to state a claim under 42 U.S.C. §
27 1983 or the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et. seq.*,
28 based on the decision of Defendant Sonja Pippin, an accounting faculty member of the

1 University of Nevada, Reno who was in charge of the search for a new accounting
2 faculty member to start in the Fall of 2017. (ECF No. 4.) Plaintiff alleges that Pippin did
3 not select him because of his older age. (ECF No. 1-1 at 2.) In his objection, Plaintiff
4 asserts that he is not alleging a claim under the ADEA, but is asserting a section 1983
5 equal protection claim. (ECF No. 4 at 2.) However, the Ninth Circuit Court of Appeals
6 has held that "the ADEA precludes the assertion of age discrimination in employment
7 claims, even those seeking to vindicate constitutional rights, under § 1983." *Ahlmeier v.*
8 *Nev. Sys. Of Higher Educ.*, 555 F.3d 1051, 1057 (9th Cir. 2009). Thus, Plaintiff's
9 exclusive remedy is relief under the ADEA. Plaintiff argues that *Ahlmeier* was overruled
10 by the Seventh Circuit Court of Appeals in *Levin v. Madiga*, 692 F.3d 607 (7th Cir. 2012).
11 However, the Seventh Circuit cannot overrule the Ninth Circuit. The Court is bound by
12 the Ninth Circuit Court's holding that the ADEA is the exclusive remedy for alleged age
13 discrimination in the employment context. (ECF No. 4 at 2.) The Court therefore agrees
14 with the Magistrate Judge's recommendation and adopts the R&R in full.

15 It is therefore ordered, adjudged and decreed that the Report and
16 Recommendation of Magistrate Judge William G. Cobb (ECF No. 3) is accepted and
17 adopted in its entirety.


18 It is further ordered that Plaintiff's Application to Proceed *In Forma Pauperis* (ECF
19 No. 1) is granted

20 It is further ordered that the Clerk file the Complaint (ECF No. 1-1).

21 It is ordered that this action is dismissed with prejudice.

22 The Clerk is instructed to close this case.

23 DATED THIS 10th day of October 2017.

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27 MIRANDA M. DU
28 UNITED STATES DISTRICT JUDGE